

CONVERTED, APPEAL

**U.S. Bankruptcy Court
Western District of Texas (El Paso)
Bankruptcy Petition #: 20-31055-hcm**

Assigned to: Bankruptcy Judge H. Christopher Mott
Chapter 7
Previous chapter 11
Original chapter 11
Voluntary

Date filed: 10/06/2020
Date converted: 05/13/2021
341 meeting: 06/28/2021

Debtor
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EL PASO-TX
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Filing Date	#	Docket Text
06/21/2021	<u>141</u>	Appellant's Designation of Contents and Issues For Inclusion In Record On Appeal Filed by Michael R. Nevarez for Debtor Double H Transportation LLC (Nevarez, Michael) (related document(s): <u>130</u> Notice of Appeal Filed by Michael R. Nevarez for Debtor Double H Transportation LLC (Filing Fee:\$ 298.00) (Nevarez, Michael) (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit)(related document(s): <u>122</u> Order Denying Confirmation of First Amended Plan of Reorganization (related document(s): <u>97</u> First Amended Plan of Reorganization for Small Business Under Chapter 11 Subchapter V filed by Michael R. Nevarez for Debtor Double H Transportation LLC. (Nevarez, Michael) (related document(s): <u>62</u> Chapter 11 Small Business Subchapter V Plan filed by Michael R. Nevarez for Debtor Double H Transportation LLC.)(Nevarez, Michael) (Order entered on 5/14/2021), <u>123</u> Order Converting Case to Chapter 7. (Brad W. Odell removed from the case. Trustee Ronald E Ingalls added to the case.) (Order entered on 5/14/2021), <u>125</u> Order Dismissing Omnibus Objection to Class 4 Claims (related document(s): <u>112</u> Omnibus Objection To Class 4 Claims With

		Notice Thereof Filed by Michael R. Nevarez for Debtor Double H Transportation LLC (Nevarez, Michael) (related document(s): 97 First Amended Plan of Reorganization for Small Business Under Chapter 11 Subchapter V filed by Michael R. Nevarez for Debtor Double H Transportation LLC. (Order entered on 5/14/2021)))
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**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

IN RE:	§	
DOUBLE H TRANSPORTATION, LLC,	§	CASE NO. 3:21-cv-00121-KC
	§	
Appellant,	§	
	§	
v.	§	
	§	
BRAD W. ODELL (CHAPTER 11 TRUSTEE),	§	
UNITED STATES TRUSTEE – ELP12,	§	
MHC FINANCIAL SERVICES,	§	
ENGS COMMERCIAL FINANCE CO.,	§	
	§	
Appellees.	§	

APPELLANT'S DESIGNATION FOR APPEAL

COMES NOW DOUBLE H TRANSPORTATION, LLC (hereinafter referred to as "Appellant" or "Double H" or "Debtor"), Appellant and Debtor in the above-captioned proceedings, by and through the undersigned counsel, pursuant to Rules 4, 6 and 10 of the Federal Rules of Appellate Procedure, and hereby respectfully files this designation of the record and issues for the appeal, as follows:

I. ITEMS TO BE INCLUDED IN THE RECORD.

- A. Appellant hereby designates all documents heretofore included in the record of Cause No. 3:21-cv-00121-KC, in the United States District Court for the Western District of Texas, El Paso Division.
- B. Appellant hereby also designates all documents in the record of *In Re: Double H Transportation, LLC*, in the United States Bankruptcy Court for the Western

District of Texas, El Paso Division, Cause No. 19-31830-hcm (hereinafter referred to as the “Chapter 11 Case”).

- C. Appellant hereby also designates all documents in the record of *In Re: Double H Transportation, LLC*, in the United States Bankruptcy Court for the Western District of Texas, El Paso Division, Cause No. 20-31055-hcm (hereinafter referred to as the “Subchapter V Case”).
- D. Appellant further designates all documents in the record of *In Re: Hector Hernandez and Yadira Haydee Hernandez*, in the United States Bankruptcy Court for the Western District of Texas, El Paso Division, Cause No. 19-31524-hcm (hereinafter referred to as the “Chapter 13 Case”).

II. ISSUES ON APPEAL.

Pursuant to Rules 4, 6 and 10 of the Federal Rules of Appellate Procedure, and reserving further amendment or modification, if necessary, Appellant hereby respectfully submits the following issues to be presented on appeal:

- A. Whether the Bankruptcy Court’s “Order Denying Motion For Stay Pending Appeal” (“DOC#137”), signed on June 8, 2021, and entered on June 8, 2021, constitutes a manifest error of law and fact, and by definition an abuse of discretion.
- B. Whether the Bankruptcy Court’s “Order Converting Case to Chapter 7” (DOC#123), signed on May 13, 2021, and entered on May 14, 2021, constitutes a manifest error of law and fact, and by definition an abuse of discretion.
- C. Whether the Bankruptcy Court’s Order dismissing the “Order Granting Omnibus Objection To Class 4 Claims, With Notice Thereof” (DOC#125), signed and

entered on May 14, 2021, and in effect denying Appellant's "Omnibus Objection To Class 4 Claims, With Notice Thereof" (DOC#112), constitutes a manifest error of law and fact, and by definition an abuse of discretion.

D. Whether the Bankruptcy Court's "Order Denying Confirmation of First Amended Plan of Reorganization" (DOC#122) ("Order Denying Confirmation"), signed on May 13, 2021, and entered on May 14, 2021, constitutes a manifest error of law and fact, and by definition an abuse of discretion, considering in part:

1. The Bankruptcy Court did not comply with 11 U.S.C. §1191, which provides that if all of the applicable requirements of §1129(a), other than paragraphs (8), (10), and (15), are met, the Bankruptcy Court, on request of the debtor, "*shall*" confirm the plan if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.
2. The Bankruptcy Court denied the Amended Plan filed by the Debtor, presumably on the basis that the Amended Plan provided that "ZERO" would be paid to unsecured creditors in Classes 3 and 4, based on the Debtor's liquidation analysis, although the Order Denying Confirmation did not so state.
3. The Bankruptcy Court denied the Amended Plan filed by the Debtor, presumably on the basis of the Objection of MHC Financial Services (Class 3) ("MHC"), despite the fact that MHC failed to timely submit a ballot in accordance with the Plan requirements.
4. The Bankruptcy Court denied the Amended Plan filed by the Debtor,

presumably on the basis of the Objection of ENGS Commercial Finance Co. (“ENGS”), despite the fact that ENG failed to timely file a proof of claim, or submit a ballot in accordance with the Plan requirements.

5. The Bankruptcy Court denied the Amended Plan filed by the Debtor, and refused to provide the Debtor leave to modify, even though Debtor proposed to modify the Plan to include MHC as an Unsecured Creditor, so that MHC and all other unsecured creditors could share in the 100% distribution of the disposable income to the Unsecured Creditors.
6. The Bankruptcy Court denied the Amended Plan filed by the Debtor, and refused to provide the Debtor leave to modify, even though Debtor proposed to modify the Plan to include ENGS as an Unsecured Creditor, so that ENGS and all other unsecured creditors could also share in the 100% distribution of the disposable income to the Unsecured Creditors.
7. The Bankruptcy Court denied the Amended Plan filed by the Debtor, even though Section 1191(b) permitted the Bankruptcy Court to “cramdown” a plan over a dissenting class if the plan does not “discriminate unfairly”, which the Amended Plan, and the proposed modified plan, clearly did not, according to the uncontested documentary and testimonial evidence, by paying all projected disposable income as required under section 1191(b) and (c) of the Bankruptcy Code.
8. The Bankruptcy Court denied the Amended Plan filed by the Debtor, even though Section 1191(b) permitted the Bankruptcy Court to “cramdown” a plan over a dissenting class if the plan provides “fair and equitable”

treatment, which the Amended Plan, and the proposed modified plan, clearly did, according to the uncontested documentary and testimonial evidence, by paying all projected disposable income as required under section 1191(b) and (c) of the Bankruptcy Code.

9. The Bankruptcy Court denied the Amended Plan filed by the Debtor, even though Section 1191(b) permitted the Bankruptcy Court to “cramdown” a plan over a dissenting class if the plan is “feasible”, which the Amended Plan, and the proposed modified plan, clearly were, according to the uncontested documentary and testimonial evidence, despite paying all projected disposable income as required under section 1191(b) and (c) of the Bankruptcy Code.
10. The Bankruptcy Court denied the Amended Plan filed by the Debtor, presumably on the basis that the Amended Plan was not proposed in “good faith”, as required by section 1129(a)(3) of the Bankruptcy Code, although the Order Denying Confirmation did not so state, and the uncontested documentary and testimonial evidence proved otherwise.

June 10, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **APPELLANT'S DESIGNATION FOR APPEAL** was served either by electronic means as listed on the Court's CM/ECF filing and noticing system, and/or by regular first-class mail, postage prepaid, to the following parties in interest, on or about June 10, 2021:

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